IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

WP(C).No. 26469 of 2005(A)

PETITIONER:

K.R.VIJAYAMONEY, HIGHER SECONDARY SCHOOL TEACHER, R.M.H.S.S., ALOOR, IRINJALAKUDA, THRISSUR DISTRICT.

BY ADV. SRI.GANESH G.PILLAI
SMT.K.GIRIJA
SRI.O.V.RADHAKRISHNAN (SR.)

RESPONDENTS:
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1. THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, THIRUVANANTHAPURAM.

2. THE DISTRICT EDUCATION OFFICER, IRINJALAKUDA.

3. THE MANAGER, R.M.H.S.S., ALOOR, IRINJALAKUDA (VIA), THRISSUR DISTRICT.

ADDITIONAL RESPONDENT

4. LAISON.T.J.
PRINCIPAL IN CHARGE
RAJARSHI MEMORIAL HIGHER SECONDARY SCHOOL, ALOOR, IRINJALAKUDA, THRISSUR DISTRICT

Additional Respondent No.4 impleaded vide order dated 26/06/2007 in I.A.No.8457/07

BY ADV. SRI.KRB.KAIMAL (SR.)
GOVERNMENT PLEADER
SRI.B.UNNIKRISHNA KAIMAL
GOVT. PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 **TRUE COPY OF G.O.(MS)NO.351/2004/G.ED.DTD. 20/11/2004**

EXT.P2 **TRUE COPY OF THE JUDGMENT DTD. 18-02-2005 IN W.P.C.NO. 5757/05**

EXT.P3 **TRUE PHOTOCOPY OF THE REPRESENTATION DTD. 10/08/2004 MADE BY THE PETITIONER TO THE RESPONDENT.**

EXT.P4 **TRUE PHOTOCOPY OF THE ORDER DTD. 24-06-05 OF R1.**

EXT.P5 **TRUE PHOTOCOPY OF THE CIRCULAR NO.CD B1/11646/HSE/2003 DTD. 13-04-2005**

EXT.P6 **TRUE PHOTOCOPY OF THE REPRESENTATION DTD. 05-08-2005 MADE BY THE PETITIONER TO THE FIRST RESPONDENT.**

EXT.P7 **TRUE PHOTOCOPY OF THE G.O.(MS)NO.161/2004/G.EDN. DTD 14-06-2004**

EXT.P8 **TRUE PHOTOCOPY OF THE G.O.(MS)NO.43 OF 2005/G.EDN. DTD. 11-02-2005**

EXT.P9 **THE TRUE PHOTOCOPY OF THE ORDER DTD. 24-11-2005 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.**

EXT.P10 **TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE THIRD RESPONDENT.**

EXT.P11 **TYPED COPY OF THE PROCEEDINGS DTD. 10-08-2005 ISSUED BY THE THIRD RESONDENT.**

EXT.P11(A) **TRUE COPY OF THE PROCEEDINGS DTD. 10-08-2005 ISSUED BY THE THIRD RESPONDENT.**

EXT.P12 **TRUE COPY OF THE CIRCULAR DTD. 25-02-2006 ISSUED BY THE FIRST RESPONDENT.**

EXT.P13 **TRUE COPY OF THE SELECTION COMMITTEE ISSUED BY THE THIRD RESPONDENT.**

EXT.P14 **TRUE COPY OF THE RESULT OF SELECTION COMMITTEE ISSUED BY THE THIRD RESPONDENT.**

RESPONDENT'S EXTS.

EXT.R3(A) **TRUE COPY OF THE PROCEEDINGS DTD. 10-08-2005 OF THE THIRD RESPONDENT.**

/True Copy/

S. SIRI JAGAN, J.

W.P.(C)No.26469 OF 2005

Dated this the 17th day of December, 2007

JUDGMENT

The petitioner who is a Higher Secondary School Teacher in Sanskrit comes up with this writ petition challenging the proceedings of the Selection Committee refusing to select her for promotion to the post of Principal of the 3rd respondent's School. The petitioner was the only qualified Higher Secondary School Teacher in the School for promotion to the post of Principal in the School. The rule relating to method of appointment of the Principal of a Higher Secondary School as contained in Rule 4 of Chapter XXXII of the Kerala Education Rules prescribes the method of appointment of Principal as promotion from Higher Secondary School Teacher. Note 2 to item No.1 of Rule 4 stipulates that the post of Principal will be a selection post and the selection has to be made by a committee consisting of the members as stipulated in the Note. The Selection Committee was constituted by the 3rd respondent consisting of the Manager himself, a Selection Grade Lecturer of Post Graduate Department

of Commerce of Government College Thrissur and an executive Engineer, Irrigation Division, Thrissur. The petitioner being the only eligible candidate for selection, the Selection Committee interviewed the petitioner and submitted Exts.P13 and P14. In the same, the Selection Committee did not recommend the petitioner for promotion to the post of Principal on the ground that her performance in the interview was below satisfactory and she seems to be not capable of handling the post of Principal of a Higher Secondary School. In Ext.P14, Selection Committee endorsed in the remarks column that she is not selected for the post. The petitioner therefore seeks the following reliefs in this writ petition.

> " A. issue a writ of mandamus or any other writ order or direction directing the 3rd respondent to appoint the petitioner as the Principal 'in charge' of Higher Secondary Section of RMHSS, Aloor as she is the senior most Higher Secondary School Teacher in the School.
>
> B. Issue a writ of mandamus or any other writ order or direction directing the 1st respondent to consider Exhibit P6 and the proposal for upgradation and grant approval to the petitioner as HSST (Full time) forth with as she is a by transfer appointee before special rules came into effect.
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> C. Issue a writ of mandamus or any other writ order or direction

directing the respondents to promote and appoint the petitioner as the Principal of RMHSS, Aloor as she is the one and only person, eligible to the post of Principal in the school possessing all the required qualifications as mandated in Chapter XXXII of the K.E.R., 19959.

D. Issue any such other or direction as this Honourable Court deems fit and proper in the facts and circumstances of this case.

E. Direct the 1st respondent to grant to approval to the petitioners service as HSST (full time) with effect from 28.7.1999.

F. To issue a writ of certiorari and quash Exhibit P11 order passed by the 3rd respondent as being illegal and arbitrary.

G. Declare that the petitioner is the entitled to be promoted as Principal RMHSS, Aloor since she is the only eligible, qualified and fit person to be so appointed.

H. To issue a writ of certiorari and quash Exhibits P13 and P14 and direct the 3rd respondent to appoint petitioner as Principal of the school and further to direct the 1st respondent to grant approval to such appointment."

Out of the above prayers what is now pressed before me is only the prayers C, G and H. The contention of the petitioner is that the fact that the post of Principal is a selection post does not give the authority to the Selection Committee to

refuse to select a person unless there is a categoric finding that the person is unfit to hold the post. The petitioner would contend that the Selection Committee consisted of three individuals, who had absolutely no knowledge of Sanskrit and therefore they could not have validly assessed the suitability of the petitioner, which has to be assessed with reference to her knowledge in Sanskrit, her qualifications and experience. The fact that she had the qualifications and experience prescribed for the post is undisputed and therefore without adequate knowledge of Sanskrit the Selection Committee could not have rejected the candidature of the petitioner especially since she was the only candidate possessing the prescribed qualifications for promotion to the post of Principal from among Higher Secondary School Teachers of the School. The petitioner also relies on the decisions of **DHARAM VIR SINGH TOMAR** Vs. **ADMINISTRATOR,DELHI ADMINISTRATION AND OTHERS [1991 SUPP (2) SCC 635]**, **UNION OF INDIA AND OTHERS** Vs. **LT. GEN. RAJENDRA SINGH KADYAN AND ANOTHER [2000 (6) SCC 698], KIRAN GUPTA AND OTHERS** Vs. **STATE OF U.P. AND OTHERS [2000(7) SCC 719]**, **DR. KRUSHNA CHANDRA SAHU AND OTHERS** Vs. **STATE OF ORISSA AND OTHERS [1995(6) SCC 1] Janki Prasad Parimoo and others**

Vs**. State of Jammu & Kashmir and others [AIR 1973 SUPREME COURT 930].**

2. The 3rd respondent Manager disputes the contentions of the petitioner. He would submit that as is evident from Ext.P13, the performance of the petitioner in the interview was below satisfactory and the Selection Committee did not find that the petitioner is suitable for the post of Principal of a Higher Secondary School. The 3rd respondent would contend that the Selection Committee's proceedings are based on an objective assessment of the petitioner's qualities, which is not susceptible to interference by this Court under Article 226 of the Constitution of India.

3. I have considered the rival contentions in detail. Under Chapter XXXII of the KER, the first source of appointment as Principal is by promotion from Higher Secondary School Teacher. Of course Note 2 of item No.1 of Rule 4 thereof stipulates that the post of Principal will be a selection post. Apart from the same, there is no indication anywhere in the Rule as to how the selection has to be conducted. Ordinarily the word 'selection' would mean the process of picking the best among the available candidates, after assessing the merit of the candidates. Here the only

candidate available is the petitioner. Therefore there is no question of assessing comparative merit. The Supreme Court of India in the decision of **LT. GEN. RAJENDRA SINGH KADYAN's Case (supra)** has considered the question as to how the selection for promotion is to be made. In that decision, it was observed this:

> "11.----------
> Selection implies the right of rejection depending upon the criteria prescribed. Selection for promotion is based on different criteria depending upon the nature of the post and requirements of the service. Such criteria fall into three categories, namely.
>
> 1. seniority-cum-fitness,
> 2. seniority-cum-merit,
> 3. merit-cum-suitability with due regard to seniority.
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> 12.Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. "Seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to

> All-India Services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them."

Here the rules do not prescribe that the selection should be by any of the three methods. It simply says that the post is a selection post. Since it does not postulate seniority-cum-fitness or seniority-cum-merit as the mode of selection, the only other alternative, going by the Supreme Court decision, is to assess the merit-cum-suitability of the candidates available for selection with due regard to seniority. The question of seniority and merit does not arise here since the petitioner is the only candidate available for consideration for selection. Therefore the only other criteria, which has to be looked into, is the suitability of the petitioner.

4. In this connection the Supreme Court decision in **Valsala Kumari Devi** V. **Director, Higher Secondary Education** **[2007(4) KLT 494 (SC)** had occasion to consider the meaning of expression "subject to seniority and suitability". In paragraph 13 of the said judgment, it has been held this:

> "The expression "subject to seniority and suitability" occurring in G.O. dated 27.6.1990 does not mean the

comparative assessment of suitability and it only means the suitability for the particular post and the suitability is related to the prescribed qualification and requisite experience. In view of the distinction between the appointment by promotion from General Education Subordinate Service and an appointment to the 75% vacancies ear-marked for direct recruitment, we are of the view that the finding arrived at by the Director, Higher Secondary School, Thiruvananthapuram, Kerala that seniority is not the criterion for 'appointment by promotion to HSST' is erroneous and is not in terms of the Government Orders referred to above. Though in the order, it is stated that the 5th respondent is more suitable than the appellant, as rightly pointed out by learned counsel appearing for the appellant, it has not been shown or indicated the reasons or grounds for arriving at such decision that the 5th respondent was found more suitable than the appellant for the post. We are also in agreement with the contention that the Director has mechanically accepted the decision of the Selection Committee that the 5th respondent is more suitable than the appellant without reference to selection for appointment by promotion to HSST against 25% quota earmarked for qualified High School Assistants. We are of the view that the Director has committed an illegality in upholding the selection of the 5th respondent for

> appointment to the post of HSST. Further the 5th respondent has been preferred to the appellant for the reason that his main subject in B.A. is History which is totally irrelevant for promotion to HSST from among HSAs. In G.O. dated 27.6.1990 the qualification prescribed is second class Master's Degree in the concerned subject with B.Ed. It is relevant to point out that the appellant and the 5th respondent have obtained M.A. Degree from Mysore University and the 5th respondent took B.Ed with Social Studies. The other reason given by the Selection Committee for preferring 5th respondent is that he has proficiency in English, Kannada and Malayalam whereas the appellant has proficiency in English and Malayalam. As rightly pointed out by learned counsel appearing for the appellant, once the requirement of the prescribed qualification is satisfied, the selection must be made on the basis of the seniority and suitability and there is no scope for making comparison of qualifications or comparative assessment of suitability. The expression 'suitability' means that a person to be appointed shall be legally eligible and 'eligible' should be taken to mean 'fit to be chosen'
>
> (emphasis supplied)

Applying those principles the eligibility for promotion of the petitioner to the post of Principal has to be decided only on the basis of her suitability. Going by the above decisions, the

suitability has to be decided on the basis of the prescribed qualifications and requisite experience. In this case admittedly none of the three selection committee members had any knowledge whatsoever in Sanskrit. Therefore they could not have validly assessed the proficiency of the petitioner in Sanskrit. Admittedly the petitioner had the requisite qualification and experience. What they have stated in Ext.P13 is only this:

> "This is to certify that M/s. Vijayamonery, K.R. is not selected for the post of HSS Principal as her performance in the interview was below satisfactory and she seemed to be not capable of handling the post of the Principal of a Higher Secondary School"

5. Nothing is stated in the counter affidavit as to how the Selection Committee has proceeded to assess the suitability of the petitioner. It is beyond comprehension as to what the Selection Committee meant when they said that the petitioner's performance in the interview was below satisfactory when admittedly the Selection Committee members had no knowledge of Sanskrit whatsoever. The 3rd respondent is also unable to explain to me as to how the Selection Committee came to the conclusion that the petitioner

is not capable of handling the post of Principal of a Higher Secondary School. Such a conclusion cannot be arrived at by merely asking questions to a candidate seeking promotion as principal in an interview. In the decision of **Janki Prasad Parimoo's case (supra)** the Supreme Court had occasioned to consider the question of promotion to the post of Headmasters in schools. One particular paragraph of that decision is relevant for our purpose. The same reads thus:

> "The cases of all other teachers including those who were officiating as Head Masters and Tehsil Education Officers and are eligible for promotion shall be reviewed in a proper selection made in accordance with the 1969 rules. Interviews shall not be the only test. The character rolls and the confidential records shall be taken into due consideration. If in any case the same are not available, a report or reports should be obtained from authorities who had opportunity to observe the teachers' performance and character."

Here there is no such procedure of maintaining character rolls and confidential records in an aided higher secondary schools. The question of obtaining any report from a higher officer also does not arise since this is the first time a Principal is being appointed to the 3rd respondent's school after the Higher Secondary selection started.

In the above circumstances, I am not satisfied that the proceedings of the Selection Committee which led to rejection of the petitioner's candidature is sustainable in so far as they do not categorically find the petitioner unsuitable for holding the post. Accordingly Exts.P13 and P14 are quashed. The petitioner is the only qualified Higher Secondary School Teacher in the School whom the selection committee does not categorically find unsuitable to hold the post of Principal based on any tangible material. The 3rd respondent has no case that the petitioner has any bad marks in her conduct or performance as a Higher Secondary School teacher and therefore she is unfit for the post of principal. Therefore as the only Higher Secondary School teacher available for promotion she is entitled to be selected for promotion. It is declared so. Appropriate orders based on such declaration, in favour of the petitioner shall be passed within one month from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

S. SIRI JAGAN, JUDGE

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